

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

In Re: St. Jude Medical, Inc. File No. 01-MD-1396
Silzone Heart Valves (JRT/FLN)
Products Liability Litigation

Minneapolis, Minnesota
November 19, 2003
11:00 A.M.

BEFORE THE HONORABLE JOHN R. TUNHEIM
UNITED STATES DISTRICT COURT JUDGE

(STATUS CONFERENCE VIA TELEPHONE)

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1 (Via telephone.)

2 THE COURT: Good morning, everyone. It may not
3 be morning on the East Coast, but it's still morning in the
4 central time zone.

5 Counsel, let's have you note your appearances for
6 this status conference today.

7 MR. CAPRETZ: Jim Capretz for the classes.

8 MR. ANGSTREICH: Steve Angstreich for the
9 classes.

10 MS. LINDHEIM: Carolyn Lindheim for the classes.

11 MR. JACOBSON: Joe Jacobson and David Bush for
12 Class II.

13 MR. RUDD: Gordon Rudd, plaintiffs' liaison
14 counsel.

15 MR. SIGELMAN: Dan Sigelman for the class.

16 MR. KOHN: Steven Kohn for St. Jude Medical.

17 MR. STANLEY: David Stanley for St. Jude Medical.

18 MS. VAN STEENBURGH: Tracy Van Steenburgh for
19 St. Jude Medical.

20 MS. PORTER: Liz Porter from St. Jude Medical.

21 THE COURT: Okay. Very well. Let's see.

22 Mr. Capretz, should I turn to you first?

23 MR. CAPRETZ: Sure. Yes, if you would, Your
24 Honor. We appreciate the opportunity for the Court's time.
25 We have -- I don't know if the Court has a copy of the

1 agenda and joint status conference report before it.

2 THE COURT: I do.

3 MR. CAPRETZ: But the pending issue is, as the
4 Court is well aware, we have three major issues that are
5 awaiting your decision starting with the preemption July
6 argument that we made, and that kind of ties to the case
7 management review in the sense that the classes believe we
8 need to revisit that case management status.

9 And more particularly, we have talked with our
10 colleagues on the other side of the bench in the sense of
11 Mr. Kohn and Stanley on a discovery schedule. We can't
12 agree on how to change it in the sense that St. Jude wants
13 to, as the report indicates, change it to 120 days from the
14 decision of the Court.

15 We are very concerned, Your Honor, about timing
16 here because if the classes are right, particularly Class I
17 about the need for medical monitoring, it's been over two
18 years since these -- this matter came together as an MDL,
19 and as the Court I know well appreciates, there are many
20 steps in the procedure and protocol.

21 So there is going to be more time lapsed, so it's
22 our position that we should get on with the discovery as we
23 indicate with those new dates that we have put in for the
24 first part of 2004, hopefully being in a situation where
25 we'll have some rulings that we can work with.

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1 So that's a major issue, and the timing of the
2 litigation is of serious concern to us, Your Honor.

3 MR. ANGSTREICH: Your Honor, this is Steve
4 Angstreich, if I might just pick up where Jim was, we're
5 specifically addressing PTO 28 and paragraphs 1 through 10
6 of that. Those are the time frames.

7 Our generic fact discovery under PTO 28 is
8 supposed to be completed by February 3rd of 2004. We
9 believe that that is not a doable date. However, we think
10 the date should be April 1st, and there is an issue with
11 respect to where -- where that date is.

12 That really targets all of the other dates in PTO
13 28 as it relates to the MDL. There are other discovery
14 matters that relate to the individual cases, specific
15 matters that also need to be addressed, but that's where we
16 are, and I think we need to focus on those.

17 MR. CAPRETZ: Before turning it over to defense
18 for comment, Your Honor, I might add that one of the things
19 that you may have noticed in the report, we asked the Court
20 to look at this mediation issue because on reviewing the
21 PTO's in preparation for this hearing, I noted that
22 approximately two years ago the St. Jude counsel had
23 indicated they were interested in a possible disposition of
24 individual claims and going forward with getting those
25 matters into a position to be mediated and negotiated.

1 But quite honestly, nothing has happened that I'm
2 aware of on those cases except for what I might refer to as
3 incidental contact, and as the Court is aware, a lot of
4 lawyers who get involved in multi district litigation, and
5 there is a lot of weeping and gnashing of teeth because of
6 the fact that it becomes a dark hole, and they never get
7 their cases heard or disposed of.

8 Now, there are a lot of serious issues, and I'm
9 sure we're going to have to go through the process here and
10 take considerably more time to get there for any remand,
11 but on the other hand, you know, we would invite the
12 defense to get on with the process of getting whatever
13 records they need or taking whatever depositions they need
14 so that these cases might be set for mediation perhaps
15 through a court mediation process.

16 THE COURT: Mr. Kohn or Mr. Stanley?

17 MR. STANLEY: Your Honor, it's David Stanley.
18 Throughout I'll be speaking since I haven't spoken in the
19 last two hearings. The genesis of this was an e-mail that
20 I sent to plaintiffs' counsel requesting that we move the
21 dates set for case specific discovery in the individual
22 cases.

23 You know, we feel that, you know, the preemption
24 motion and the -- even the class certification motion
25 impacts all of those individual cases, and until we're, you

1 know, we have a definitive ruling from the Court on both of
2 these issues that it just seemed to make sense to try to
3 move these dates out so either side wouldn't have to spend
4 a lot of money trying to work these cases up.

5 Plus, from St. Jude's perspective, we want to do
6 the case specific discovery in individual cases as close to
7 remand as possible so we have up-to-date medical
8 information as we're doing the discovery, and so that's
9 when I proposed that last week it just move the dates.

10 We figure we need about four months to do case
11 specific discovery. That's the fact discovery, not the
12 expert discovery, and if we could just have that date
13 triggered 120 days from the last ruling of the Court, then
14 we wouldn't have to keep coming back and modifying the
15 PTO's as we have done three times in the past. So that's
16 sort of our position on discovery.

17 We're not saying that the plaintiffs shouldn't
18 have more time to do their generic discovery, but certainly
19 we would like to have more time to do our case specific
20 discovery, and it would seem to make sense to trigger it at
21 least from the Court's rulings on these two critical
22 motions.

23 MR. ANGSTREICH: Your Honor, this is Steve
24 Angstreich. If we take the ten paragraphs of PTO 28 and
25 look at each of those separately, I think it makes the most

1 sense. Our concern is the 120 day time frame from an
2 unspecific date, and I think that leaves things too open.

3 For example, the deadline for completing generic
4 fact discovery we are proposing be moved from February 3rd
5 to April -- April 1st. That we think, that's approximately
6 80 some odd days. We think that that should give us
7 sufficient time starting in December or January and
8 addressing it.

9 Now, I think to leave 120 days from a given date
10 that we don't know just lets us hang there. Paragraphs 2,
11 3, 4, 5, 6 and 7 all relate to the case specific dates, and
12 quite honestly, medical examinations and case specific
13 discovery is to be completed by March 2, 2004.

14 I don't know why those individual cases, case
15 specific discovery couldn't be completed by March 2, but if
16 they need to take it out to one month beyond April 1st, of
17 course that's the way we did it originally in PTO 28, that
18 wouldn't be a problem from our perspective.

19 Paragraph 3 is a July 6th date. That's mandatory
20 mediations. We see no reason why July 6th needs to be
21 moved. We're talking about nine months from now, and it
22 would be difficult to envision why there would be any more
23 need to go out beyond that.

24 The case specific experts of April 5 and May 5
25 which are also a trigger off of the March 2 date, they were

1 30 days later, if you make the March 2 date April 1st, then
2 could make paragraph 4 May 1st and paragraph 5 June 1st, a
3 couple of case specific experts would then be moved down
4 from June 8, which was one month after May, so that would
5 be July, and paragraph 7, July would be August.

6 We're already now ten months from today, and that
7 really ought to be sufficient. Then what we did with
8 respect to paragraphs 8, 9 and 10 is to just use March 1,
9 April 1 and April 15, moving things out because there
10 really, we shouldn't have a problem identifying who the
11 experts would be.

12 The paragraph only requires the identification.
13 It does not require the presentation of expert reports, so
14 I don't know why we all shouldn't be in a position to
15 identify our experts five months from now and the
16 defendants six months from now, approximately six months,
17 and then both sides give a joint list of who has to be
18 deposed by April 15th.

19 That doesn't mean we have to complete them by
20 then, but it seems to me that unless we have definitive
21 dates, we need to be held to something.

22 MR. STANLEY: Your Honor, David Stanley again.
23 What we want to do is not off my proposal because it's too
24 uncertain. If it just means, you know, moving the current
25 60 days or 90 days and then just reassessing it in 60 days

1 from now, I suppose we could do that.

2 I just thought it might be easier since -- just
3 to trigger it from the rulings of the Court, but if we want
4 to do it on a date certain, then I'm sure we would be
5 willing to move the whole schedule 60 to 90 days. It seems
6 like that would be the easiest thing to do.

7 MR. ANGSTREICH: What we proposed 25, 31, I guess
8 66 days from February 3rd to April 1st. 29 days, that's
9 56 -- 57 days. If we want to take it to a full 60 days, we
10 can go from April 1st to -- that's April 4th. That's a
11 weekday.

12 I have no problem doing that, making it 60 days.
13 I think -- I think taking it out 90 is unnecessary, but
14 actually it would have to be to the 5th, Monday the 5th of
15 April.

16 THE COURT: Which date are you looking at,
17 Mr. Angstreich?

18 MR. ANGSTREICH: Paragraph 1, Your Honor. That's
19 the first date that really everything else gets modified
20 by.

21 MR. STANLEY: Your Honor, if we can just have an
22 agreement that we're going to extend these dates by 60 days
23 or sometime between 60 and 90 days, I'm sure Mr. Angstreich
24 and I can work out a pretrial order if we want to go in
25 that direction, rather than --

1 MR. CAPRETZ: Well, the only thing -- this is
2 Capretz speaking. The only thing with that, David, and I
3 appreciate that. I don't think we need to burden the Court
4 with a long discussion about potential dates because we can
5 work it out, I'm sure.

6 I think what we are saying is that there are
7 certain dates we would like to see kept. There is no
8 reasons to move everything back such as, like counsel
9 pointed out, the mediation dates for July, et cetera.

10 We would like to see those stay in place, but
11 we're talking about just the discovery dates and a short
12 extension, 60 days or so as we have done in the past. I'm
13 sure, again, counsel could work that out.

14 MR. STANLEY: I'm think we can work something
15 out, Your Honor.

16 MR. ANGSTREICH: Your Honor, this is Steve
17 Angstreich. I guess what we're asking the Court is for the
18 Court to tell us whether it should be 60 days, 75 days, 90
19 days because we really want 60 and David wants 90.
20 Actually, David wanted 120 but was kind enough to move it
21 back to 90.

22 THE COURT: I think that 60 days is probably
23 going to be enough. I'm working at trying to get both
24 orders out by the 1st of December, and that is the schedule
25 that I'm working on here. It might be earlier. It might

1 be a little later, but I think you can plan on somewhere
2 around that date for purposes of these discovery deadlines.

3 That would probably suggest that 60 days would be
4 sufficient, don't you think, Mr. Stanley?

5 MR. STANLEY: That's fine, Your Honor.

6 MR. CAPRETZ: And, Your Honor, Capretz here. If
7 it makes sense, we very much appreciate those comments. If
8 it makes sense jumping a step here, if we could set an
9 early January status conference then, I think that would
10 give the Court the cushion of until the end of the year
11 with these decisions, and we could revisit where we are
12 with all these dates and perhaps see if we can fast track
13 some of these things. That would be most appreciated.

14 THE COURT: One idea might be to revisit the
15 issue within a certain number of days after the orders are
16 released, and then you will each have a chance to assess
17 your positions and the situation at that point in time.

18 We could do a brief status conference then on
19 this particular issue if it's necessary. I would
20 appreciate it if both sides could just work together on the
21 dates, and I think the 60 day delay is probably sufficient,
22 and then I'm certainly willing to readdress the dates after
23 the ruling if either side thinks it's necessary.

24 MR. ANGSTREICH: That's appreciated. This is
25 Steve Angstreich. That's appreciated. Mr. Stanley, on

1 behalf of the defendants and myself, we'll get you a PTO 29
2 or 30, whatever the next number is, but we won't put it on
3 there. It will confuse things.

4 THE COURT: Okay. Very good. Let's see. What
5 Mr. Capretz.

6 MR. CAPRETZ: The other issue, Your Honor --
7 Capretz here -- is the request. We have a minor
8 disagreement once again with our colleagues, and this is
9 the state court depositions.

10 We have requested that the defendant St. Jude
11 Medical provide us with depositions, ASCII disk of the
12 healthcare providers taken in the state court cases.
13 St. Jude, as Mr. Stanley can further elaborate, has
14 expressed their concerns.

15 We think their concerns are unfounded, and the
16 MDL should have the information that's provided in the
17 state cases. The Court recalls, there is about 20 state
18 court cases pending. At least that's the last report we
19 got from St. Jude Medical.

20 And while there have been limited depositions to
21 date, and indeed the MDL has certain of the material
22 because certain of the material involves clients of mine
23 and certain other clients that we have contact with, we're
24 not sure we know all of the depositions that have been
25 taken, and we certainly would like this to be a ruling or

1 an order of the Court so that as these state court
2 proceedings move forward and further depositions are being
3 taken, we're given the opportunity to have these
4 depositions.

5 With that I'll turn it over to Mr. Stanley to
6 comment.

7 MR. STANLEY: Your Honor, what they are asking
8 for are not, again, depositions of St. Jude Medical
9 employees that were taken in state court cases. They're
10 asking in individual cases if we deposed an implanting
11 surgeon or a primary care physician or a cardiologist, they
12 want copies of those transcripts.

13 I'm not seeing -- I can sort of see, you know, if
14 an implanting surgeon might give testimony about what a
15 sales rep told him, although I don't think that's relevant
16 in any other case except for that particular case, I can
17 see where they could make an argument, a marginal argument,
18 for relevance.

19 I'm not seeing that same argument in the primary
20 care treater or the cardiologist in the case. That's
21 number one. Number two is, in terms of what's out there,
22 really the only, you know, Mr. Capretz has a lot of the
23 cases in the state court cases, and so he has those
24 deposition transcripts already.

25 I know that in one case in California, the one

1 state case there, that Mr. Capretz has managed to get his
2 hands on the transcript from the plaintiff's counsel in
3 that case, and I think really what is out there that has
4 not been produced are some, a couple of depositions that
5 were taken in some Ramsey County cases where Charles
6 Johnson was the plaintiffs' counsel.

7 And what we have asked the plaintiffs to do is
8 ask Mr. Johnson to see if their client will authorize the
9 release of those depositions since I'm -- we're unclear as
10 to when a case -- those cases are over, Your Honor. They
11 have been resolved. They're not pending anymore, whether
12 now these patients have waived their physician/patient
13 privilege for production to other plaintiffs' lawyers, so
14 that's primarily what we're concerned about.

15 MR. ANGSTREICH: Your Honor, this is Steve
16 Angstreich. The joint status report in III sets forth what
17 we have asked for and what we want, and it is true it says
18 healthcare provider or representatives, but it's related to
19 three specific items or areas:

20 Marketing, risk benefit and dangerous claims or
21 associated with the Silzone valve and the injury or harm
22 caused or associated with it. Those are the three
23 significant issues that relate to the case. I mean,
24 what -- how did they market it, and certainly all those
25 care providers to whom marketing was provided is

1 significant and important.

2 The risks and benefits that were disclosed are
3 critical. Whether it's a cardiologist, whether it's the
4 implanting surgeon, it doesn't matter. As Your Honor will
5 recall during the argument on the subclasses, it was
6 contended that there is going to be learned intermediary
7 defenses, the presumption defense under Comment k, the
8 state of the art defense and some of the others where the
9 issue of notice and warning and what people were told,
10 assuming that they're really going to advance it, become an
11 issue.

12 And certainly by limiting it to the areas that we
13 have, it clearly is relevant and clearly intended to lead
14 to the discovery of admissible evidence.

15 Now, with respect to the issue of patient
16 privilege, by bringing a lawsuit, the patient has waived
17 privilege, and there is no if's, and's or but's about it,
18 and by offering their doctors, they have waived any
19 patient/physician privilege.

20 We could appreciate it if under certain
21 circumstances the transcript were under seal or upon the
22 settlement of the case, they sealed the record. I don't
23 know why they would do that, but -- and certainly in the
24 interests of public health and safety, field records should
25 never be countenance, and therefore I think that there is

1 really no real issue here.

2 We should have them. The question is, should we
3 have to go to the plaintiffs' attorneys and hope that
4 they'll give it to us, or should St. Jude that has the
5 ASCII simply provide it. We went on this same issue before
6 on the issue of deposition transcripts of the St. Jude
7 people, and Your Honor basically said to Mr. Stanley, look,
8 if you've got the transcripts or you have some other way of
9 providing it, let's make it the easier way as opposed to
10 the more difficult way.

11 And so if in fact St. Jude has gotten deposition
12 transcripts, we ask that it be provided to us. If they
13 never ordered it or never got it for whatever reason,
14 obviously we have to seek an alternative source.

15 MR. STANLEY: Your Honor, the plaintiffs have
16 managed to get their hands on depositions in other cases,
17 and I don't know if they've called Mr. Johnson and asked
18 him whether or not he would be willing to provide those and
19 whether his clients would authorize it, the fact that --
20 you know, I assume that they have, but I don't know for
21 sure, so we're just concerned.

22 I don't think that if someone brings a lawsuit,
23 once it's settled they've waived their physician/patient
24 privilege forever and ever as to everyone in the entire
25 world. So that's our position, Your Honor.

1 MR. CAPRETZ: And, Your Honor, if I may, Capretz
2 here. For just a minute to say, what precipitated this was
3 a California case, as Mr. Stanley put it, I managed to get
4 my hands on. There was a local counsel in Orange County,
5 my venue, who had a case, and Mr. Stanley noticed certain
6 depositions, gave us notice of certain depositions.

7 And with our attendance at those depositions, we
8 realized there were certain other depositions that were
9 available, and counsel offered us the opportunity to view
10 those. And in this particular case, the surgeon happened
11 to testify that the representative from St. Jude Medical
12 had led him to believe that the incidence of endocarditis
13 would be reduced by Silzone or so he alleged.

14 So that is evidence that is, as Mr. Angstreich
15 points out, one of the key or core areas of the physician
16 and the course of conduct that we're concerned with in this
17 litigation. So again, it's not, should not be a question
18 or issue of our needing to persuade, cajole, somehow
19 otherwise convince plaintiffs' counsel to release them
20 because we won't even know in certain instances when
21 certain of these depositions are taken and are available.

22 It should be a matter of their turning them over
23 unless there is some problem, and we have researched the
24 HIPA issue, and we're convinced that St. Jude Medical,
25 number one, is not a covered entity under that, and number

1 two, that one of the exceptions in the HIPA law is that
2 Court may order disclosure where it's a matter of public
3 health.

4 So once again, we suggest that this should be a
5 matter where they are ordered, St. Jude Medical is ordered
6 to produce copies of those depositions to us as they're
7 available.

8 MR. STANLEY: Your Honor, just one last word, and
9 that is, I believe that the Court appointed Mr. Murphy to
10 be the state liaison counsel and to keep track of these
11 types of things. So it would seem to me that it would be
12 his job to go out and try to identify what has been taken
13 and see if plaintiffs' counsel is willing to authorize the
14 release.

15 MR. JACOBSON: Your Honor, this is Joe Jacobson,
16 if I might just add one thing. I would like to reiterate
17 what Steve Angstreich said, which is, a waiver is a waiver.
18 Once you waived your privilege by filing a lawsuit,
19 privileged medical records, it's waived for all times.

20 It's like the attorney-client privilege. Once
21 you have waived it, you can't come back and open and close
22 it at will. The privilege issue I think is really not an
23 issue.

24 Second, as you know, we have that preemption
25 issue pending. We believe that there are factual issues

1 relating to that, and we expect that part of the defense
2 that St. Jude will present is that well if some doctor,
3 some sales rep did tell a doctor that it fought
4 endocarditis, that was a random event, that was a mistake
5 and shouldn't be held against the company as a whole.

6 So to the extent we're able to find these
7 transcripts in a wide variety of cases in which doctors are
8 consistently reporting being made these representations by
9 their particular sales rep, that goes to the factual side
10 of St. Jude's preemption defense, and we need to be able to
11 present to show that this was a company wide program that
12 it wasn't an isolated incident or two.

13 THE COURT: Is there any law on this question of
14 the physician/patient privilege under these circumstances?

15 MR. STANLEY: Your Honor, we honestly haven't
16 looked at it that hard.

17 THE COURT: There is a question of whether or not
18 we want to take the time to look at that, a brief amount of
19 time or to go forward right now. My sense is that with the
20 broad scope of the rules covering discovery that these
21 matters would be relevant, clearly would be easier just to
22 get the copies from the defendant, but if there is truly a
23 legal issue on the privilege, I don't want to rule before
24 seeing that.

25 MR. STANLEY: Your Honor, if we could just have a

1 limited amount of time to look at the issue, and then we
2 could get it back to the plaintiffs' attorney if we intend
3 to contest it further.

4 MR. CAPRETZ: Your Honor, this is Capretz again.
5 We wouldn't object to that. I don't think this is a moment
6 of, you know, a situation where time is of the essence in
7 the sense that so far there have been limited depositions,
8 and if we could do this within a definitive time period,
9 then that should satisfy the plaintiffs' claims.

10 MR. ANGSTREICH: Your Honor, this is Steve
11 Angstreich. It's a question of whether or not we're
12 applying a condition precedent or a condition subsequent.
13 If Your Honor's direction is that they provide the
14 materials to us subject to a submission of briefing that
15 suggests that there is in fact a physician/patient
16 privilege, that would be our druthers, as opposed to
17 waiting for a ruling after the submission.

18 THE COURT: Well, I think, Mr. Stanley, can we
19 wrap this up within two weeks?

20 MR. STANLEY: I think we can have a position
21 within two weeks.

22 THE COURT: Okay. Let's reserve -- there may not
23 be a need for a ruling. The Court has already indicated
24 its preference here, but at the same time I do want to make
25 sure that we assess the privilege issue before going

1 forward on that.

2 MR. CAPRETZ: That's fine.

3 THE COURT: Okay. What's next?

4 MR. ANGSTREICH: If Mr. Stanley does submit
5 something in two weeks, we will respond in a -- in five
6 days.

7 MR. STANLEY: I mean, what I envision, Steve,
8 would be, in two weeks I would tell you either here are the
9 transcripts or here's why we don't think we should produce
10 the transcripts, and then you and I can meet and confer.
11 If we can't resolve it, then we could do something formal
12 with the Court.

13 MR. ANGSTREICH: This is Steve Angstreich. What
14 I envision was the filing of a position statement within
15 two weeks or an acknowledgment at some point in the very
16 near future or at the end of two weeks that there is no
17 objection, there is no objection from a physician/patient
18 standpoint.

19 I really don't think that we should take two
20 weeks to decide whether or not you're going to make an
21 issue of it and then meet and confer over your position and
22 then have a briefing schedule. I think all that does is
23 add unnecessary delay.

24 MR. JACOBSON: While we were sitting here -- this
25 is Joe Jacobson -- I did a quick search of Eighth Circuit

1 decisions on this particular issue. This is an Eighth
2 Circuit case from 1987, which is Cerro Gordo Charity. It
3 is 819 F.2d 1471, which states first that the privilege
4 issue is an issue of state law.

5 That case is involving Minnesota law and says
6 that under Minnesota law, once a -- once a privilege has
7 been waived in the context of a physician/patient
8 relationship, it is waived for all future lawsuits.

9 MR. CAPRETZ: Could we do this, Your Honor --
10 Capretz here. Could we have the position paper tendered
11 by, maybe we could get a date certain from Mr. Stanley, and
12 assuming that it's not an issue, then he will produce the
13 transcripts.

14 If it is an issue, could we have a telephonic
15 conference with the Court as to protocol for resolving it?

16 THE COURT: Yes, we certainly can. Let's try to
17 get this resolved within two weeks, including any necessary
18 meet and confer, and if we need to set a brief schedule for
19 briefing after that, we can have a quick telephone
20 conference and do it if the parties can't agree on it.

21 I intend to get this wrapped up as quickly as
22 possible, and if we can focus on this two-week period from
23 today, that would be most helpful.

24 MR. CAPRETZ: That would be good. Thank you,
25 Your Honor. The other miscellaneous items, Your Honor,

1 that we had is the Canadian class action. We reported to
2 you, as we have in the past, that there is a mediation
3 session with counsel in an effort to see if they can
4 resolve the Canadian litigation.

5 I think that's set for mid-December, and I don't
6 know if Mr. Kohn is still -- if he has anything to
7 contribute in that regard? Steve? Did we lose him?

8 MR. ANGSTREICH: I don't know if Steve is there.

9 MR. CAPRETZ: We may have lost him. It wasn't
10 exciting enough. At any rate, I don't think there is
11 anything more on that, Your Honor. On the Ramsey County
12 litigation basically is the same as we have discussed in
13 the last conference.

14 They're pending claims and trials scheduled for
15 the 2004 period, and that's pretty much an update on that.
16 I would like to go back, if we could, on the case
17 management. One of the things we had mentioned in the
18 report, Your Honor, and we would like the Court to
19 consider, is the possible implementation of a mediation
20 program.

21 As the Court is probably aware, several courts,
22 including the judge in the Baycol matter, have established
23 with a special master a program offering the opportunity to
24 the defense and the plaintiffs to try to mediate and
25 resolve their individual claims.

1 While I have no doubts that St. Jude Medical is
2 in good faith with their statement that they would like to
3 see claims resolved when the time is appropriate or as the
4 circumstances warrant, there seems to be some sort of a
5 delay or reason for not moving forward. Perhaps if we had
6 a structured mediation program from the Court, this might
7 help move those cases along.

8 So I wouldn't necessarily expect the Court to
9 issue any orders or even perhaps state an opinion, but we
10 would appreciate the Court considering that opportunity.

11 THE COURT: Mr. Stanley, do you have anything to
12 add to that?

13 MR. STANLEY: No, Your Honor.

14 THE COURT: Well, I think there will be an
15 appropriate time, Mr. Capretz, and I appreciate your
16 comments. We'll all take them into account, and let's get
17 beyond the next steps here with the Court's order on the
18 two major issues.

19 MR. CAPRETZ: All right. I think that probably
20 concludes all matters unless any of the parties have any
21 comments they would like to add, but we do wish to talk
22 about a, you know, next live and in person status
23 conference.

24 I have to tell the Court I'm here in Minnesota,
25 as I'm telling everyone, coming here for a little over two

1 years now. This is the first time where I've seen all blue
2 skies, no clouds and a beautiful temperature outside, so
3 it's not all bad coming here, and I have been pleasantly
4 surprised today.

5 THE COURT: I assume we should focus on an early
6 January date. Does that make sense?

7 MR. ANGSTREICH: That makes the most sense, Your
8 Honor.

9 THE COURT: Just a sec. We need to get a
10 calendar here. The week of January 12th, is that a week
11 that holds substantial conflict?

12 MR. ANGSTREICH: The 14th, 15th or 16th -- this
13 is Steve Angstreich -- are fine with me. I have to be in
14 the Third Circuit on the 12th and state court on the 13th.

15 MR. STANLEY: 14th or 15th works with us, Your
16 Honor.

17 THE COURT: Okay. Why don't we focus on those
18 two dates, just put a hold there. Ms. Gleason will be back
19 in touch with you, and we'll nail down the specific time.

20 MR. CAPRETZ: Very well. We will hear then from
21 the Court?

22 THE COURT: Right. Okay. Anything else for
23 today?

24 MR. ANGSTREICH: No, Your Honor.

25 MR. CAPRETZ: Thank you, Your Honor.

1 THE COURT: Thank you, everyone. We'll be in
2 recess.

3 * * *

4 I, Kristine Mousseau, certify that the foregoing
5 is a correct transcript from the record of proceedings in
6 the above-entitled matter.

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10 Certified by:
Kristine Mousseau, CRR-RPR

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Dated: ^ , 2003

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